# July 2006

# Update: Sexual Assault Benchbook

## CHAPTER 3

## Other Related Offenses

### 3.4 Aiding and Abetting

#### E. Pertinent Case Law

##### 2. Specific Intent Crimes

Insert the following text before the **Note** on page 122:

However, "evidence of a shared specific intent to commit the crime of an accomplice is [not] the exclusive way to establish liability under [Michigan's] aiding and abetting statute." *People v Robinson*, ___ Mich ___, ___ (2006). The *Robinson* Court explained that the Legislature's abolition of the common-law distinction between principals and accessories did not eliminate the common-law theory of an accomplice's liability for the probable consequences of the crime committed. Therefore, a defendant who intends to aid and abet the commission of a crime is liable for that crime and for "the natural and probable consequences of that crime." *Id*. at ___.

In *Robinson*, the defendant was properly convicted of second-degree murder when the victim of an assault died as a result of injuries inflicted by the defendant's accomplice even where the defendant said "that's enough" and walked away from his accomplice and the victim before the victim was shot. *Id.* at ___. Evidence showed that the defendant drove his accomplice to the victim's home and intended to participate with his accomplice in assaulting the victim. Said the *Robinson* Court:

> "In our judgment, a natural and probable consequence of a plan to assault someone is that one of the actors may well escalate the assault into a murder." *Id*. at ___.

# CHAPTER 5

# Bond and Discovery

## 5.14 Discovery in Sexual Assault Cases

### B. Discovery Rights

#### 1. Generally

Insert the following text after the last paragraph on page 269:

**Brady v Maryland*, 373 US 83 (1963).

Even when the evidence was made known only to a law enforcement officer and not to the prosecutor, a *Brady** violation may result from the failure to disclose the exculpatory evidence to the defendant. *Youngblood v West Virginia*, 547 US ___, ___ (2006). In *Youngblood*, the defendant was convicted of sexual assault charges, a weapons charge, and indecent exposure. Months after the defendant was sentenced, a law enforcement officer was shown a potentially exculpatory note written by two victims of the crime. The officer refused to take the note and told the individual in possession of it to destroy it. *Id*. at ___.

The defendant claimed that failure to disclose the note was a *Brady* violation and moved to set aside the verdict. The trial court denied the defendant's motion and a divided Supreme Court of Appeals affirmed the trial court "without examining the specific constitutional claims associated with the alleged suppression of favorable evidence." *Youngblood, supra* at ___. In its review of Youngblood's petition, the United States Supreme Court noted that "Youngblood clearly presented a federal constitutional *Brady* claim to the [West Virginia] Supreme Court." *Youngblood, supra* at ___. Because none of the West Virginia courts addressed the *Brady* issue, the United States Supreme Court vacated the West Virginia appellate court's judgment and remanded the case to obtain "the benefit of the views of the full Supreme Court of Appeals of West Virginia on the *Brady* issue." *Youngblood, supra* at ___.

# CHAPTER 5
# Bond and Discovery

## 5.14 Discovery in Sexual Assault Cases

### D. Discovery Violations and Remedies

#### 1. Violations

Insert the following text before the last full paragraph on page 278:

A defendant is entitled to disclosure of all exculpatory evidence, even when the evidence was made known only to a law enforcement officer and not to the prosecutor. *Youngblood v West Virginia*, 547 US ___, ___ (2006). In *Youngblood*, a case in which a potentially exculpatory note written by two victims of the crime was not disclosed to the defendant, the United States Supreme Court remanded the case to the West Virginia Supreme Court of Appeals for that court's "view" of the *Brady** issue raised by the defendant in his motion to set aside the verdict. The Court did not decide the issue; instead, the Court declined to review the merits of the case without first having the West Virginia court consider the *Brady* issue. *Youngblood, supra* at ___.

**Brady v Maryland*, 373 US 83 (1963).

In *Youngblood*, a defendant was convicted of two counts of sexual assault, two counts of brandishing a firearm, and one count of indecent exposure. All charges arose from a single incident involving the defendant, three women, and the defendant's friend. The defendant's convictions were based

> "principally on the testimony of the three women that they were held captive by Youngblood and a friend of his, statements by [one of the women] that she was forced at gunpoint to perform oral sex on Youngblood, and evidence consistent with a claim by [the same victim] about disposal of certain physical evidence of their sexual encounter." *Youngblood, supra* at ___.

Several months after the defendant was sentenced, he learned that an investigator had discovered "new and exculpatory evidence" concerning his case. The evidence was

> "in the form of a graphically explicit note that both squarely contradicted the State's account of the incidents and directly supported Youngblood's consensual-sex defense. The note, apparently written by [two of the victims], taunted Youngblood and his friend for having been 'played' for fools, warned them that the girls had vandalized the house where Youngblood brought them, and mockingly thanked Youngblood for performing oral sex on [the other victim]." *Youngblood, supra* at ___.

Allegedly, the note had been given to an officer involved in investigating the defendant's case. The officer read it but refused to take possession of the note and told the individual who had given him the note to destroy it. The defendant claimed that failure to disclose the note was a *Brady* violation and moved to set aside the verdict. The trial court denied the defendant's motion and a divided Supreme Court of Appeals affirmed the trial court "without examining the specific constitutional claims associated with the alleged suppression of favorable evidence." *Youngblood, supra* at ___. In its review of Youngblood's petition, the United States Supreme Court noted that "Youngblood clearly presented a federal constitutional *Brady* claim to the [West Virginia] Supreme Court." *Youngblood, supra* at ___. Because none of the West Virginia courts addressed the *Brady* issue, the United States Supreme Court vacated the West Virginia appellate court's judgment and remanded the case to obtain "the benefit of the views of the full Supreme Court of Appeals of West Virginia on the *Brady* issue." *Youngblood, supra* at ___.

# CHAPTER 6

# Specialized Procedures Governing Preliminary Examinations and Trials

## 6.4 Speedy Trial Rights

### A. Defendant's Right to Speedy Trial

#### 4. The 180-Day Rule for Defendants in Custody of Department of Corrections

Delete the second and third sentences in the paragraph following the January 2006 update to page 289. Insert the following text before the last paragraph on page 289:

In *People v Cleveland Williams*, ___ Mich ___, ___ (2006), the Michigan Supreme Court, contrary to *People v Smith*, 438 Mich 715 (1991),* ruled that MCL 780.131 "contains no exception for charges subject to consecutive sentencing." Consequently, unless specifically excepted under MCL 780.131(2), the 180-day rule applies to *any* untried charge against *any* prisoner, without regard to potential penalty. According to the Court, the plain language of MCL 780.131 permits a prisoner subject to mandatory consecutive sentencing to assert his right to a speedy trial. However, that the defendant in this case was entitled to raise the speedy trial issue did not end the Court's review of this case. After concluding that the defendant raised a valid claim under MCL 780.131, the Court considered the delay in bringing the defendant to trial and determined that the defendant's speedy trial rights had not been violated. *Cleveland Williams, supra* at ___.

*Overruled to the extent of its inconsistency with MCL 780.131.

In addition to the defendant's speedy trial claim, the Court addressed specific case law that incorrectly interpreted the statutory language governing the notice required to trigger application of the statute. Contrary to *People v Hill*, 402 Mich 272 (1978), and *People v Castelli*, 370 Mich 147 (1963),* the Court noted that the statutory time period of 180 days begins to run when the prosecution receives notice from the Department of Corrections:

*_Hill_ and _Castelli_ were overruled to the extent of their inconsistency with MCL 780.131.

> "The statutory trigger is notice to the prosecutor of the defendant's incarceration and a departmental request for final disposition of the pending charges. The statute does not trigger the running of the 180-day period when the Department of Corrections actually learns, much less should have learned, that criminal charges were pending against an incarcerated defendant." *Cleveland Williams, supra* at ___.

# CHAPTER 7

# General Evidence

## 7.3 Evidence of Other Crimes, Wrongs, or Acts

### C. Admissibility of "Other-Acts" Evidence in Cases Involving Sexual Assault

Add the following text to the November 2004 update to page 338:

> **Note:** In *People v Drohan*, 475 Mich ___ (2006), the Michigan Supreme Court affirmed, on other grounds, the Court of Appeals decision discussed here (*People v Drohan,* 264 Mich App 77 (2004)).

# CHAPTER 7
# General Evidence

## 7.6 Former Testimony of Unavailable Witness

Insert the following text after the April 2004 update to page 364:

Whether hearsay evidence constitutes a "testimonial statement" barred from admission against a defendant where the defendant has not had an opportunity to cross-examine the declarant requires a court to conduct an objective examination of the circumstances under which the statement was obtained. *Davis v Washington*, 547 US ___, ___ (2006). Although the United States Supreme Court did not "produce an exhaustive classification of all conceivable statements . . . as either testimonial or nontestimonial," the Court expressly stated:

> "Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Davis, supra* at ___ (footnote omitted).

*Davis* involved two separate cases (*Davis v Washington* and *Hammon v Indiana*) in which a defendant assaulted a victim, the victim answered questions posed by law enforcement personnel, the victim did not testify at trial, and the victim's statement was admitted as evidence against the defendant. In one of the cases, *Davis v Washington*, the statements at issue arose from the victim's (McCottry) conversation with a 911 operator during the assault. After objectively considering the circumstances under which the 911 operator "interrogated" McCottry, the Court concluded that the 911 tape on which the victim identified the defendant as her assailant and gave the operator additional information about the defendant was not testimonial evidence barred from admission by the Confrontation Clause. According to the Court:

> "[T]he circumstances of McCottry's interrogation objectively indicate its primary purpose was to enable police assistance to meet an ongoing emergency. She simply was not acting as a *witness*; she was not *testifying*." *Davis, supra* at ___ (emphasis in original).

In the other case, *Hammon v Indiana*, the statement at issue arose from answers the victim (Amy) gave to one of the police officers who responded to a "reported domestic disturbance" call at the victim's home. Amy

summarized her responses in a written statement and swore to the truth of the statement. In this case, the Court concluded that the circumstances surrounding Amy's interrogation closely resembled the circumstances in *Crawford v Washington*, 541 US 36 (2004), and that the "battery affidavit" containing Amy's statement was testimonial evidence not admissible against the defendant absent the defendant's opportunity to cross-examine the victim. The Court summarized the similarities between the instant case and *Crawford*:

> "Both declarants were actively separated from the defendant—officers forcibly prevented [the defendant in Amy's assault] from participating in the interrogation. Both statements deliberately recounted, in response to police questioning, how potentially criminal past events began and progressed. And both took place some time after the events described were over. Such statements under official interrogation are an obvious substitute for live testimony, because they do precisely *what a witness does* on direct examination; they are inherently testimonial." *Davis (Hammon)*, *supra* at ___ (emphasis in original).